

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL UTILITY ORDERS
Selected for Publication
February 2004

February 6, 2004

ESCHELON TELECOM OF
WASHINGTON INC.

DOCKET NO. UT-033039

v.

ORDER NO. 04

QWEST CORPORATION

FINAL ORDER GRANTING PETITION
FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT, IN
PART

Commission policy generally does not allow an opt-in by a competitive local exchange carrier to a provision in another interconnection agreement that would exceed the life of the agreement containing the provision that is opted in. ¶ 21; § 252.

A rate charged by an incumbent carrier in violation of a competitive carrier's opt-in rights under federal law is "unlawful" for purposes of RCW 80.04.240, rather than "unreasonable", and thus will trigger a two-year, rather than a six-month limitation on refunds. ¶ 23; RCW 80.04.240; RCW 80.04.220.

The Commission will limit refunds for failure to honor opt-in requests to the time period beginning with the date of presentation of a clear (sufficient) opt-in request. ¶ 30; § 252.

February 12, 2004

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION

DOCKET NO UT-033011

ORDER NO. 05

v.

ADVANCED TELECOM GROUP,
INC., ET AL

ORDER GRANTING COMMISSION
STAFF'S MOTION FOR PARTIAL
SUMMARY DETERMINATION;
GRANTING IN PART AND DENYING IN
PART THE MOTION TO DISMISS AND
FOR SUMMARY DETERMINATION

The responsibility for filing interconnection agreements with state commissions under section 252 of the Telecommunication Act of 1996 falls upon both parties to an agreement. ¶ 48; § 252.

The Commission has statutory authority enforce the failure to file interconnection agreements under RCW 80.36.610(1). ¶ 54; RCW 80.36.610; § 252.

Unfiled negotiated agreements that violate subsection 252(a) would also violate subsection 252(e)(i). For reasons of judicial economy, the Commission may dismiss

the 252(a) cause of action and proceed solely with the second cause of action for violations of subsection 252(e)(i). *¶ 62; § 252.*

The purpose of the subsection 252(e)(i) filing requirement is for state commission review and approval, while the purpose of subsection 252(i) is to prevent discrimination between carriers. Where the same action, the failure to file agreements, is the basis for separate causes of action under subsections 252(e)(i), the obligations under the two subsections and the consequences of violations are sufficiently different to allow both causes of action to continue. *¶ 67; § 252.*

The Commission's Interpretive and Policy Statements are advisory, not binding. Without binding rules in place regarding requirements for filing agreements with the Commission, there can be no violation of RCW 80.36.510 requiring disclosure of services provided and of rates, charges and fees. *¶ 71; RCW 80.36.510.*

The Commission considers dispositive motions under standards established in civil rules. A party may move to dismiss a claim or case if the opposing party's pleading fails to state a claim on which a court, or the Commission, may grant relief. A claim may be dismissed under CR 12 if, beyond a reasonable doubt, no facts justify recovery and if, in an unusual case, plaintiff shows on the face of the complaint an insuperable bar to relief. *¶ 72; CR 12; WAC 480-09-426; 480-07-380.*

The Telecommunication Act of 1996 specifies no explicit time frame for filing agreements with state commissions, however, it is rational to infer that a carrier would need to file agreements within a reasonable time on order to render the provisions of section 252 meaningful. *¶ 81; § 252; WAC 480-07-464.*

A claim may be dismissed under CR 56 if the pleadings, together with any properly admissible evidentiary support, shows that there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. *¶ 90; CR 56, WAC 480-09-426; 480-07-380.*

Under the rules of summary judgment, once the moving party meets its initial burden of showing the absence of any genuine issues of material fact, the burden then shifts to the non-moving party to set forth specific facts showing there is a genuine issue for trial, not just bare allegations, to avoid summary judgment. *¶ 91; WAC 480-09-426.*

Whether an agreement is a settlement agreement or an interconnection agreement depends upon whether it contains an ongoing obligation concerning subsection 251(b) and (c) services, not simply whether it is termed a settlement agreement. *¶ 120; §§ 251, 252.*

Under rules of statutory construction, a reviewing court must determine if a statute is silent or ambiguous with respect to the issue in question, and if so, review the statutory language, the legislative

history, and the policies involved to decide whether the agency responsible for administering the statute has interpreted the statute reasonably, and whether the agency's construction of the statute is permissible. ¶ 155; § 252.

State commissions retain jurisdiction to review negotiated agreements and arbitrate disputes under section 252, subject to the FCC's rule for ISP-bound traffic. While the Commission lacks jurisdiction to determine the level of compensation for ISP-bound traffic, the Commission retains jurisdiction to "arbitrate carrier-to-carrier disputes including disputes that involve ISP-bound traffic", as well as to enforce any interconnection agreements that might contain provisions concerning ISP-bound traffic. ¶ 174; § 252.

February 13, 2004

DOCKET NO. UG-021584

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION

SIXTH SUPPLEMENTAL ORDER
REJECTING BENCHMARK
MECHANISM TARIFF

v.

AVISTA CORPORATION d/b/a
AVISTA UTILITIES

The Commission reviews affiliated interest transactions to determine whether they are reasonable. Historically, the Commission has reviewed such transactions to determine whether the prices of the goods or services involved are the "lower of cost or market", in order to safeguard against the lack of arms' length bargaining. When the "lower of cost or market" standard is

unavailable due to the nature of the transaction, the Commission will utilize other standards of reasonableness, such as whether there are significant, measurable benefits to ratepayers sufficient to offset the uncertainties and lack of safeguards inherent in affiliated transactions.
RCW 80.16.030; RCW 80.16.040.

February 26, 2004

In the Matter of the Petition of
Qwest Corporation to Initiate a
Mass-Market Switching and
Dedicated Transport Case Pursuant
to the Triennial Review Order

DOCKET NO. UT-033044

ORDER NO. 13

PREHEARING CONFERENCE ORDER

The FCC's Triennial Review (TRO) requires that the Commission consider the potential revenues a CLEC may earn in analyzing the potential ability of CLECs to deploy their own switches to serve the mass market. The Commission must balance the concept of revenues based on the most efficient model for entry with revenues based on a business model for entry – typical revenues gained from serving the average customer in the market. ¶ 16; TRO ¶¶ 519, 472, 483